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MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA, JR., BUILDING
CALEPA HEADQUARTERS
1001 I STREET
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

MONDAY, OCTOBER 3, 2005
1:00 P.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Rosario Marin, Chairperson

Ms. Rosalie Mul

Ms. Cheryl Peace

Mr. Carl Washington

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Ms. Marie Carter, Chief Counsel

Mr. Howard Levenson, Deputy Director

Mr. Gabe Aboushanab, Supervisor, LEA Program Assistance & Evaluation Section

Ms. Sharon Anderson, Manager, LEA Support Services Branch

ALSO PRESENT

Mr. Terry LeVeille, TL & Associates

Mr. Stell Manfredi, Mader County Community Administrative Officer

Mr. Douglas Nelson, Madera County Acting County Counsel

Ms. Jill Nishi, Madera County Environmental Health Director

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1 PROCEEDINGS

2 CHAIRPERSON MARIN: Welcome to the very special
3 Board meeting of the Integrated Waste Management Board.

4 Let's see. Would you please call the roll.

5 BOARD SECRETARY BAKULICH: Mulé?

6 BOARD MEMBER MULÉ: Here.

7 BOARD SECRETARY BAKULICH: Peace?

8 BOARD MEMBER PEACE: Here.

9 BOARD SECRETARY BAKULICH: Washington?
10 Marin?

11 CHAIRPERSON MARIN: Here.

12 This is a special Board meeting to consider Board
13 action over the Madera County LEA. Notice has been
14 provided. And this hearing shall be conducted in
15 accordance with Title 14 Code of Regulations Section
16 18087.

17 As all of you know, the hearing is open to the
18 public. What we will do is first the Board staff will
19 make a presentation and then the county will have an
20 opportunity to present testimony and evidence on relevant
21 issues.

22 As appropriate, I -- although I don't think so, I
23 may impose reasonable time limits on the number of
24 presenters and the nature and length of the presentations.
25 In other words, we would like to end here before 8 o'clock

1 at night.

2 MR. MANFREDI: We will.

3 CHAIRPERSON MARIN: I'm kidding.

4 I may also afford -- as appropriate, I may also
5 afford an opportunity for non-evidentiary comment from
6 members of the public that may be relevant.

7 After that, the Board may adjourn to closed
8 session to deliberate on its decision, taking into
9 consideration the severity of the deviations as related to
10 the potential negative impacts on public health and safety
11 and the environment.

12 Should a closed session take place, then the
13 Board will announce its decision after that closed
14 session.

15 Within ten days of the hearing the Board will
16 issue a written decision, which shall include a statement
17 of the factual and legal basis of the decision.

18 With that, Mr. Howard Levenson.

19 DEPUTY DIRECTOR LEVENSON: Thank you, Madam
20 Chair. Good afternoon, Board members.

21 As you indicated, Madam Chair, this item is
22 consideration of Board action over the Madera County LEA
23 for failure to comply with designation and certification
24 requirements.

25 Specifically, current conditions reveal that the

1 county is not fulfilling two requirements:

2 First, separation of the operating unit and the
3 LEA; and

4 Second, maintaining adequate staffing.

5 (Thereupon an overhead presentation was
6 Presented as follows.)

7 DEPUTY DIRECTOR LEVENSON: With me today are
8 Sharon Anderson, Gabe Aboushanab and Elliot Block from the
9 Legal Office on the -- to provide staff input into this
10 hearing.

11 But before staff provides you with details
12 regarding these findings and what options are before you,
13 I'd like to provide some historical context about the
14 conflict of interest issue.

15 In particular, in situations where a county owns
16 and operates a solid waste facility or facilities, keeping
17 the operating unit, that is, the program that runs and
18 operates those facilities, separate from the LEA, that is,
19 the program that regulates those facilities, in order to
20 avoid conflicts of interest was a cornerstone issue in the
21 Legislature's 1989 shaping of the Integrated Waste
22 Management Act. Prior to this there were situations where
23 local agencies which operated a solid waste system within
24 a jurisdiction were also enforcing operational health and
25 permitting standards. In some cases there were even

1 multiple entities with overlapping authorities within a
2 single jurisdiction.

3 CHAIRPERSON MARIN: Howard, if I may.

4 DEPUTY DIRECTOR LEVENSON: Yes, ma'am.

5 CHAIRPERSON MARIN: Let me just reflect for the
6 record that Mr. Washington just joined us.

7 Thank you.

8 DEPUTY DIRECTOR LEVENSON: Thank you, Madam
9 Chair.

10 The 1989 Act established the framework in which
11 the Integrated Waste Management Board certifies LEA
12 programs and then oversees and evaluates their
13 performance. And it includes the following provision
14 regarding conflict of interest:

15 --o0o--

16 DEPUTY DIRECTOR LEVENSON: And this is shown on
17 your screen, paraphrasing Public Resources Code Section
18 43207: "No local governmental department or agency which
19 is the operating unit for a solid waste handling or
20 disposal operation shall be the enforcement agency."

21 Now, in crafting regulations in 1991 to implement
22 the Legislature's direction regarding this conflict of
23 interest issue, staff and stakeholders faced a dilemma.
24 Clearly if a county owns and operates solid waste
25 facilities, then also acts as the LEA, at some point both

1 programs are directly responsible to the Board of
2 Supervisors. So it's impossible to provide for 100
3 percent separation.

4 Yet it's also unrealistic to expect that the
5 Board of Supervisors will oversee these programs on a
6 daily basis.

7 In order to craft -- or to balance the need to
8 avoid potential conflicts of interest with this reality of
9 government structure, the Board crafted regulations that
10 really allow many arrangements except for one.

11 --o0o--

12 DEPUTY DIRECTOR LEVENSON: And that particular
13 provision is in Title 14 of the California Code of
14 Regulations.

15 The one prohibition that derives from this is
16 that the LEA and the operating unit cannot both be placed
17 under the purview of and be answerable to a single agency
18 or department head. The reasoning behind this is that
19 there would be greater potential for a conflict of
20 interest in how a facility would be regulated because the
21 agency or department head would be making virtually daily
22 decisions about both programs.

23 So, again, the solution requires that the LEA be
24 out of the chain of command of a local department or
25 agency head that also has the operator under its

1 jurisdiction.

2 However, again recognizing the realities of local
3 government structure, the regulations would allow the LEA
4 and the operating unit to both be under the purview of the
5 County Administrative Officer, or CAO; that is, someone
6 who is not the head of a specific agency or department but
7 rather is the head of the entire county structure.

8 This solution provides for statewide consistency
9 in the overall system of LEA programs, and it's served the
10 Board, local jurisdictions and LEAs for many years.

11 In a few cases local jurisdictions have decided
12 not to separate the operating unit from its proposed LEA
13 designation. And as a result, the Board has become the
14 jurisdiction's enforcement agency.

15 In all other cases local jurisdictions have
16 established organizational structures that maintain this
17 separation or they've contracted with other counties to
18 provide such services or they've entered into multi-county
19 joint powers agreements or the like.

20 So with that introduction to the -- it's kind of
21 the historical context on this overriding issue of
22 conflict of interest, I'd like to turn Gabe Aboushanab,
23 who now will provide staff's perspectives on the
24 discussions that have gone on over the last two years
25 between the Waste Board staff and Madera County.

1 CHAIRPERSON MARIN: Thank you.

2 --o0o--

3 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

4 ABOUSHANAB: Thank you, Howard.

5 Good afternoon, Madam Chair and Board members.

6 In 1992 Madera County's Board of Supervisors
7 designated their Environmental Health Department as
8 enforcement agency for their jurisdiction. And as
9 required, Board staff first verified that the designated
10 was separate from the local waste management operating
11 units. And subsequently Board staff verified that Madera
12 County's designated agency fully complied with
13 certification requirements, including staff adequacy,
14 technical expertise, budget resources, training and the
15 agency's Enforcement Program Plan. And, consequently, on
16 October 29, 1992, the Board approved the designated
17 agency, its enforcement plan, and issued its
18 certification.

19 --o0o--

20 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

21 ABOUSHANAB: In 2003, the Board staff became aware that
22 Madera County wanted to reorganize and create a Resource
23 Management Agency and place a number of departments under
24 the umbrella of the new agency. This proposed structure
25 places both the Department of Engineering and General

1 Services, which operates the solid waste facilities, and
2 the Department of Environmental Health, which functions as
3 the LEA, within one agency and under the supervision of
4 the RMA director.

5 --o0o--

6 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

7 ABOUSHANAB: Before you is a chart which reflects the
8 mentioned organization. As you can see, the proposal
9 removes the separation between the LEA and the operating
10 unit.

11 Board staff shared their concerns over the
12 reorganization meeting certification requirements with
13 Madera County and received the following?

14 --o0o--

15 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

16 ABOUSHANAB: And what is referred before you as proposed
17 Structure 1. Madera County suggested placing the LEA
18 functions of the Department of Environmental Health under
19 the CAO. Board staff concerns revolved around the
20 physical location of the LEA and how CAO oversight would
21 be accomplished.

22 --o0o--

23 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

24 ABOUSHANAB: The chart before you shows the proposed
25 Structure 1.

1 Board staff conducted several phone conferences
2 with Madera County and expressed the concerns I just
3 mentioned about the proposal.

4 In addition, the proposal called for the LEA to
5 still be supervised by the Director of the Department of
6 Environmental Health for their non-LEA duties. This means
7 LEA staff could potentially face duties which they cannot
8 perform as LEA but may be able to do so when they wore the
9 non-LEA duty hat.

10 And during those conferences and in response to
11 Board concerns, Madera County expressed initially its need
12 to be efficient with the use of its limited resources and
13 the advantages of the RMA.

14 Later it expressed its need for a qualified
15 registered environmental health specialist to supervise
16 the LEA, as opposed to the CAO, who would not be
17 technically qualified. And later in a discussion it
18 asserted that the RMA director was essentially the
19 equivalent of the CAO and their circumstance since she or
20 he would be directly answerable to the Board of
21 Supervisors, not the CAO.

22 These points were later reemphasized in a county
23 letter dated July 20, 2005. Staff provided the Board
24 members this letter last Friday, and copies have been made
25 available for those interested today in this room.

1 --o0o--

2 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

3 ABOUSHANAB: Madera County responded to Board staff
4 concerns that I just mentioned for proposed Structure 1 by
5 providing an ordinance establishing the CAO/LEA oversight,
6 presented here as Structure 2 in the slide before you.
7 The response also asserted that Madera County will staff
8 the LEA as needed with part-time staff instead of the
9 required dedicated full-time staff, that the LEA would
10 physically remain with the Resource Management Agency.

11 --o0o--

12 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

13 ABOUSHANAB: Board staff examined proposed Structure 2
14 that's before you in a chart, and noted it was potentially
15 satisfactory once additional information was provided, in
16 essence, addressing how Madera County envisioned the CAO
17 supervising the LEA, given that the LEA would be housed
18 with the RMA, not the CAO --

19 --o0o--

20 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

21 ABOUSHANAB: -- and basically how Madera County was
22 meeting the requirement for an LEA to have at least one
23 full-time REHS; and with that in mind, how Madera's
24 ordinance would be implemented given that part of the
25 full-time REHS was to be from the Director of

1 Environmental Health, whose other duties are supervised by
2 the RMA director, who would also be the supervisor of the
3 landfill operating unit.

4 Madera County responded to further Board staff
5 requests by sharing their concerns for efficiency, the CAO
6 concerns with the LEA supervision, and an assertion that
7 the RMA director is equivalent to the CAO.

8 This basically translates to what we term as
9 proposed Structure 3 before you.

10 --o0o--

11 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

12 ABOUSHANAB: In October 2004 Madera County forwarded a new
13 amendment to its RMA ordinance which it believed would
14 resolve the issues that had been discussed. It proposed
15 to do so by abandoning the LEA under CAO concept and
16 keeping the LEA in the Resource Management Agency and
17 altering the RMA director ability to hire and fire. Board
18 staff shared their concerns and surprise with Madera
19 County's proposed Structure 3, for consistency with
20 statute and regulation and inadequate staffing.

21 Additionally, Board staff inquired about the
22 status of previously proposed Structure 2, which was
23 potentially acceptable. Madera County indicated in a
24 January 7th, 2005, letter that the change, meaning LEA
25 program move under CAO, was not being made, but indicated

1 that it had instead adopted the ordinance amendment that
2 it had forwarded, and I mentioned in October 2004.

3 --o0o--

4 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

5 ABOUSHANAB: This slide shows Madera County's implemented
6 structure as it stands today. Subsequent discussions this
7 year between Board staff and Madera County remain
8 unsuccessful.

9 The extent of further communications between
10 Board staff and Madera County revolved around preparation
11 and notice for this hearing, responses and amendments for
12 rescheduling the hearing.

13 So, in summary, contrary to Board staff
14 direction, Madera County placed the operating unit for the
15 landfill and the LEA within the Resource Management
16 Agency. Additionally, to our knowledge, the LEA consists
17 of one REHS acting as part-time staff and the director of
18 Environmental Health acting as part-time supervisor.

19 --o0o--

20 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

21 ABOUSHANAB: In order to address the matter of staffing we
22 have this slide before you. And it makes mention that LEA
23 staff adequacy and technical expertise were addressed
24 entirely during the certification of regulatory
25 development. The reason is LEAs must function as the sole

1 agency responsible for ensuring that all aspects of
2 extensive permitting, inspection, and enforcement duties
3 are carried out and must maintain highly trained staff.

4 Historically, Board experience demonstrated that
5 full-time LEA staff members dedicated solely to solid
6 waste were consistently better technically, developed
7 expertise quickly, and dedicated adequate time to be
8 properly trained. Board experience also showed that a
9 combination of non-dedicated full-time employees with
10 multiple responsibilities often failed to meet the needs
11 of the LEA program.

12 For these reasons the certification regulations
13 adopted in 1991 required with no exception at least one
14 full-time staff in each LEA program.

15 These regulations were amended in 1994 to allow
16 jurisdictions with a population under 50,000 persons to
17 use a workload analysis to determine LEA staffing. And
18 this would be subject to Board approval.

19 The same regulations were amended again in 2003
20 following an analysis of population growth in the state
21 affecting existing LEAs, and changed this figure from
22 50,000 to 80,000. Madera County does not fall into this
23 category of jurisdictions.

24 --o0o--

25 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

1 ABOUSHANAB: Madera County disclosed that it lacks
2 sufficient resources to fund one full-time REHS as
3 required by certification regulations. In a August '04
4 letter Madera County's Board of Supervisors reaffirmed
5 their intent not to fund a separate REHS position for the
6 LEA program. While the resource matter is understandable,
7 it is important to note that statute provides for all
8 local jurisdictions many options, upon a majority vote of
9 their local governing body, to prescribe, revise, and
10 collect fees and other charges locally to recover the LEA
11 program costs. Plus we have the annual LEA grant
12 supplement from the Waste Board.

13 --o0o--

14 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR

15 ABOUSHANAB: And I would like to say, in summary, that
16 Board staff reviewed existing LEA records for
17 jurisdictions having populations over 80,000 but under
18 200,000 as a comparison to Madera, which I believe is
19 approximately 141,000, and we found that ten LEAs are in
20 that jurisdictional category and they all meet the
21 certification staff requirements.

22 And, additionally, on page 5 of your agenda item,
23 staff provided several examples of jurisdictions who had
24 to solve their potential conflict of interest, and did so
25 without violating their certification requirements.

1 I believe this concludes my portion of the
2 presentation. I'd be happy to answer any of your
3 questions.

4 DEPUTY DIRECTOR LEVENSON: I'd like to add a
5 couple of concluding remarks, Madam Chair.

6 To summarize, as we've discussed, the current
7 structure of the Madera County LEA is not consistent with
8 Board regulations. In addition, the lack of one dedicated
9 full-time staff is also not consistent with Board
10 regulations.

11 --o0o--

12 DEPUTY DIRECTOR LEVENSON: This slide indicates
13 that the relevant options for you are listed on pages 1 to
14 2 of your item. And they include a variety of actions.

15 --o0o--

16 DEPUTY DIRECTOR LEVENSON: We are recommending
17 that if the county was willing to reconsider the current
18 structure and go back to discussions about what we call
19 proposed Structure 2, we would recommend Option 2,
20 establishing some kind of schedule and probationary
21 period. However, short of that, and given the current
22 circumstances as we understand it, we must recommend
23 Option 1, withdrawing the designation approval and
24 decertifying the Madera County Department of Health as the
25 LEA and adopting Resolution 2005-277.

1 With that, we'd be happy to answer any questions
2 you might have. And of course the county is here to
3 provide its own presentation.

4 CHAIRPERSON MARIN: Thank you, Howard. Thank
5 you, Gabe.

6 Let me do two things just -- I always forget to
7 ask for ex partes. And I know we had a committee meeting
8 this morning.

9 Mr. Washington, do you have anything to report?

10 BOARD MEMBER WASHINGTON: I'm up to date.

11 CHAIRPERSON MARIN: Ms. Mulé?

12 BOARD MEMBER MULÉ: Up to date.

13 CHAIRPERSON MARIN: Ms. Peace?

14 BOARD MEMBER PEACE: Yes, I spoke with Terry
15 Leveille and Mr. Hope regarding the tire manifest.

16 CHAIRPERSON MARIN: Okay. And I am up to date.

17 Okay. Are there any questions for staff at this
18 time?

19 BOARD MEMBER WASHINGTON: Yes, Madam Chair, I
20 have one question.

21 CHAIRPERSON MARIN: Mr. Washington.

22 BOARD MEMBER WASHINGTON: Mr. Levenson, did you
23 make that request -- I'm on?

24 Has that request been made to them?

25 DEPUTY DIRECTOR LEVENSON: To reconsider their --

1 BOARD MEMBER WASHINGTON: To reconsider.

2 DEPUTY DIRECTOR LEVENSON: Yes, we've done that
3 several times over the course of the last year.

4 BOARD MEMBER WASHINGTON: And what was their
5 response?

6 DEPUTY DIRECTOR LEVENSON: Their response was as
7 Mr. Aboushanab described, which is to maintain their
8 current structure with the potential -- with the amended
9 ordinance.

10 BOARD MEMBER WASHINGTON: Okay. Thank you.

11 CHAIRPERSON MARIN: Ms. Peace.

12 BOARD MEMBER PEACE: Can you just tell me, the
13 LEA that they have now, it's just part-time, he's only
14 dedicating part-time -- part of their time to the LEA
15 duties?

16 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR
17 ABOUSHANAB: Well, as I understand it, they have a
18 workload that they analyze to be X number of hours and
19 provide X amount of staff.

20 BOARD MEMBER PEACE: A full-time person to split
21 among several different people?

22 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR
23 ABOUSHANAB: Yes.

24 CHAIRPERSON MARIN: We might be able to ask that
25 directly of the LEA -- of the county.

1 BOARD MEMBER PEACE: Tell me how their
2 performance has been under --

3 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR
4 ABOUSHANAB: Over the last -- the last two intervals the
5 jurisdiction was found not to be fulfilling all
6 responsibilities. And they had successfully completed
7 work plans and accomplished the tasks, you know, after
8 they were found out.

9 BOARD MEMBER PEACE: Okay. Thank you.

10 CHAIRPERSON MARIN: Okay. Go ahead -- just for
11 the record, just let me make sure that people can hear you
12 in case anybody --

13 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR
14 ABOUSHANAB: Should I repeat it?

15 BOARD MEMBER WASHINGTON: Just what you -- just
16 the response you gave to Ms. Peace.

17 LEA PROGRAM ASSISTANCE & EVALUATION SUPERVISOR
18 ABOUSHANAB: Okay. In the last two evaluations, although
19 the LEA was found not to be fulfilling all
20 responsibilities, they were placed on a work plan which
21 identified the sites which needed work for complete
22 compliance, and they've successfully done so. As a matter
23 of fact, you probably remember the last two permits,
24 Mammoth and Fairmead, I believe were before you recently.
25 And that's been one of the reasons we were slowing this

1 down, so the LEA would be in place to issue a permit
2 before we had to do this hearing.

3 CHAIRPERSON MARIN: All right. Before any one of
4 you starts, we really appreciate you taking the time to
5 come here. You had no choice but to come anyways. But we
6 want to thank you very much for being here.

7 Understand that this is not easy for all of us to
8 be here. And understand that we would like to come to a
9 resolution. The options before us are ones that none of
10 us want to really take. And we'll love to hear from you.
11 We will debate some of the questions and -- but know that
12 it is in our best interests and your best interests that
13 we come to some kind of agreeable conclusion. And right
14 now what's before us is steps that none of us, I'm sure,
15 want to take.

16 Okay. So who's going to go first? State your
17 name for the record please.

18 MS. NISHI: Thank you.

19 Jill Nishi, Madera County Environmental Health
20 Department Director, LEA.

21 And let me just first say as well, thank you for
22 affording us this opportunity. I know we were asked to
23 appear. But at the same time, I have tell you there's
24 some relief in finally getting this matter heard by your
25 Board, because we do feel that there is some adequate

1 justification on the county's part. Thank you again,

2 Madam Chair, members of the Board.

3 Can you hear me?

4 Okay. I'd like to first inform your Board that
5 with me today is our County Administrative Officer, Stell
6 Manfredi. And to his right is our Chief County Counsel,
7 Doug Nelson.

8 And so, again, we'll try not to go on too lengthy
9 in our comments. But at the same time, we would each like
10 to have an opportunity to say something here.

11 First of all, I would like to comment on our
12 performance and our evaluations. And Mr. Aboushanab is
13 correct. We have had -- the last two valuations we have
14 had some performance issues. However, we have been able
15 to work through those and some accepted and approved work
16 plans. We've just completed those work plans with MRF --
17 Mammoth MRF and the Fairmead landfill. Our performance
18 issues, we're very much tied to facilitating and
19 completing those permit revisions.

20 We've also -- as Mr. Levenson and Mr. Aboushanab
21 had indicated, we have been the LEA since 1992. Even when
22 we were able to say we had this person fulfilling that
23 responsibility on a primary basis, we have historically --
24 and I will say with all confidentiality of other LEAs out
25 there, who are similar in our population and staffing

1 sizes, that we do what we can with the staff that we have
2 available. And, quite honestly, from a manager's
3 perspective, if I dedicate one person to do nothing but
4 the LEA -- and, quite honestly -- and let me just say that
5 the work is being done with how we've been implementing
6 the program -- and that person leaves, we have a
7 tremendous hole in expertise in our department. Even
8 though they may have an REHS, it does take some -- a
9 learning curve to become familiar with the statutes and
10 the regulations and the inspection process.

11 And so, therefore, I feel to the benefit of the
12 LEA program and to maintain that level of expertise, we do
13 have to dedicate a couple of different people to the
14 program. There again I'd like to clarify. I believe the
15 program is being administered on a full-time basis. It's
16 just that I cannot dedicate a "one person" to do that
17 entirely.

18 I will also say that I think the full-time REHS
19 issue is easily resolvable. I anticipate that as -- and
20 Mr. Manfredi can comment on this -- as budget constraints
21 get a little bit lighter, we will be able to increase our
22 staffing and then -- and also we are looking at a county
23 who has been growing tremendously. That doesn't mean the
24 number of facilities we inspect and permit has grown. It
25 has not. It has stayed the same. So, therefore, our

1 workload remains the same. If the workload were
2 increased, obviously that would justify the increased
3 personnel to that.

4 As far as the organizational structure and the
5 conflict of interest, the issue that I have for that and
6 what I would like to emphasize to your Board is this: As
7 the LEA, we have been operating independently of the
8 engineering department even before the RMA creation. Even
9 after the RMA creation we still act independently as a
10 local enforcement agency. I don't get involved with
11 franchise agreements, hauler agreements, what have you.
12 We basically can now walk across a hall and knock on their
13 door and say, "Hey, what's up? You've got to correct this
14 and you've got to do it now."

15 So, therefore, the formation of the RMA from my
16 perspective has really been to streamline many processes
17 and increase and improve the communication between the
18 different departments so that we can provide better
19 information to our board.

20 I am a department head. I am an at-will
21 employee. My board of supervisors still has the authority
22 to hire, fire, terminate, what have you. So in my mind
23 and in real experience, I will tell you that how we
24 conduct the LEA role and responsibilities is the very same
25 as it has been before we were placed in a building with

1 these other departments.

2 I would also like to make a comment on the one
3 full-time REHS. And like I had indicated earlier, we -- I
4 truly feel that is the most resolvable of the two issues.
5 I think where it got confused and intertwined is when --
6 as we were in discussion and negotiation with Board staff
7 on an alternative but acceptable organizational structure,
8 we'd agreed, okay, as far as the LEA functions and
9 responsibilities, we will continue to communicate directly
10 with the CAO if that's going to make this acceptable.
11 Where I feel that there needs to be clarification is when
12 there was an insistence or emphasis on there being one
13 REHS. Well, in my mind the LEA is not Jill Nishi or one
14 specific person. It is the entire organization that was
15 certified and designated by our board of supervisors. I
16 think to place the emphasis on the implementation of this
17 program within a local jurisdiction on just the fact that
18 Joe Q citizen here -- not Joe Q citizen, but John Doe here
19 is the LEA reduces and diminishes the quality of the
20 implementation of this program locally. That person is
21 basically on their own. They will be under another
22 department head possibly. But what does that department
23 head know about the LEA program?

24 The staff people that I have assigned to continue
25 the LEA program by making our monthly inspections for open

1 as well as closed sites, I will tell you they benefit from
2 not only my experience but also the experience of a
3 supervising that we have filled since March of this year.
4 That person brings to the organization a great deal of
5 expertise in the solid waste management and as the LEA.

6 So it's no longer just me and one other line
7 staff person. We now have three of us that make up the
8 LEA. And I think that is efficient. As we are able to
9 train newer staff, again we maintain that level of
10 continuity and expertise that we need to maintain in order
11 to continue on with this program.

12 As I had stated a little bit earlier, I will tell
13 you that -- and please know this, that I appreciate the
14 efforts that your staff have made in trying to negotiate
15 an acceptable resolve. But somewhere down the process
16 here, I think we all came to a conclusion here that there
17 probably needs to be your guidance or direction on this
18 matter. I think what I was hearing was that there are
19 certain scenarios or acceptable structures that have
20 already been acknowledged as being acceptable. This was
21 not -- did not fit any of those structures. So,
22 therefore, I would just ask that your Board please
23 consider again the reasonableness. Where I'm coming from
24 here is the reasonableness and the efficiency of
25 administering this program.

1 There again, just because if you can make things
2 good on paper just by putting the LEA here and the
3 Environmental Health over here and what have you that may
4 look good on paper, but is that realistic to the
5 efficiency of a local administration?

6 The other issue is, even if that looks good on
7 paper and that's acceptable, well, no, you still have to
8 place Joe over there in order for this to be approved.
9 There again, in my mind, we lose -- we diminish the
10 efficacy of the program being administered.

11 I'd just like to reiterate, I believe we are
12 administering this program on a full-time basis. It's
13 just that I do not say Joe here is it. I can do that. I
14 can easily come to you and say, "You know, Joe is my
15 person. He's the LEA." But Joe was not the designated
16 LEA on paper. The Environmental Health Department was.

17 Just in conclusion, I would like to respectfully
18 ask your Board to consider Option 4 and possibly even
19 Option 2. In my letter that I just submitted to your
20 Board today I've requested that your Board please consider
21 Option 4 in your discussion -- or in your decision as
22 presented in the staff report, to direct staff to even
23 revisit these regulations and how they're being
24 interpreted, and does it meet the intent of the statutes,
25 is it being reasonably applied or interpreted?

1 I recognize that if we are decertified as the LEA
2 and the Waste Board does have to step in, albeit even
3 temporarily, as the EA, we recognize there are already
4 some inconsistencies. Your staff does not have to be an
5 REHS. I accept that. It doesn't mean I have any less
6 regard or respect for your inspection staff, your LEA
7 staff. But there are some inconsistencies. And maybe
8 during the rule-making process maybe the different
9 stakeholders have their specific reasons for that. I
10 don't know.

11 But whether it's your Board is the EA or another
12 jurisdiction as the EA, I do believe that they are going
13 to be basing their cost on not one full-time person but on
14 a full-time equivalence. And there -- it's not going to
15 be a full-time equivalence. It's not going to be one
16 person. If I were to consider Fresno County to be the LEA
17 for us, they're not going to say, "Hey, Jim over here is
18 going to be your LEA. He's going to be doing nothing else
19 but Madera County LEA." I don't see that happening. And
20 so, there again, I -- to draw a comparison, I think
21 there's some inconsistencies there. And if you are
22 looking at how this protects the public, how can you say
23 this is better than this? You can't.

24 And for right now that's all I have. Be welcome
25 to answer any questions you may have.

1 And also Mr. Manfredi and Mr. Nelson would like
2 to speak.

3 CHAIRPERSON MARIN: Thank you, Ms. Nishi.

4 Just for the record, we have received a letter
5 dated October the 3rd from the Resource Management Agency.
6 That's the letter that you referred to on your comments.

7 And we also just received a County of Madera
8 Administrative Management letterhead dated September 29th.
9 And that's from the County Administrator, Mr. Manfredi.
10 And this will also be on the record.

11 Mr. Manfredi.

12 Thank you, Ms. Nishi.

13 MR. NELSON: I am Mr. Nelson, and I'll do clean
14 up.

15 (Laughter.)

16 CHAIRPERSON MARIN: Okay. Go ahead, Mr. Nelson.

17 MR. NELSON: I should be brief.

18 One of the earlier -- one of the -- I think it
19 is. The green light's on.

20 Can you hear me now?

21 Good. Okay.

22 One of the slides you saw earlier was an
23 organizational structure that ran from the Board of
24 Supervisors to the CAO, who oversaw the Department of
25 Engineering and General Services, Environmental Health and

1 other departments. You saw a number of other slides. But
2 if you focus on that first slide for a moment and take the
3 County Administrative Officer out of the equation and
4 insert the RMA Director into it, that's the change that's
5 being made in reality. And that's the only change that's
6 being made. This CAO prior to the formation of this
7 agency provided administrative direction. Now, the
8 resource management agency director provides
9 administrative direction.

10 The difference in the two structures in reality
11 is that as a practical matter -- no offense to Mr.
12 Manfredi, but he has no idea what the LEA does. And he
13 has to oversee a lot of departments and he has precious
14 little opportunity to find out what the LEA does. It's
15 not that he doesn't want to. It's -- I know the man
16 personally. He's working a 50-hour week now. He doesn't
17 have time to take this on.

18 The formation of the RMA itself was to take a
19 huge administrative burden off of Mr. Manfredi's shoulders
20 and give it to someone who could spend the time, take the
21 time, and have the expertise and the background to be able
22 to make informed decisions.

23 In reality, if you do not let us do this, we're
24 in a situation where we have somebody reporting to someone
25 else who doesn't understand what he's doing. That does

1 not resolve the conflict of interest problem. The
2 conflict of interest problem hasn't gone away, as staff
3 from Integrated Waste Management has already indicated.
4 They have to recognize the potential of a conflict of
5 interest as against the reality of government. This is
6 the reality of government. This is the day-to-day
7 workings of government, is we have to have a chain of
8 command and a chain of administrative command to people
9 who can make informed decisions. And that is not Mr.
10 Manfredi.

11 No offense, Stell.

12 And I believe other than that, I --

13 CHAIRPERSON MARIN: Now you really have to clean
14 it up.

15 MR. NELSON: I'll take it up with Mr. Manfredi
16 later.

17 With respect to the -- I think Jill Nishi has
18 pretty well effectively covered why at this point we need
19 to have -- we need to fill the full-time responsibility
20 with part-time people. I think the one thing she didn't
21 talk about and the one thing that staff kind of touched on
22 earlier was: Their structure is based solely on
23 population. Well, population doesn't necessarily account
24 for workload. As Jill pointed out, we have a certain
25 number of facilities that do have to be inspected or --

1 and I also am someone who doesn't have any idea what an
2 LEA does. Nevertheless, I know that they spend a certain
3 amount of time doing it, and we don't have enough
4 facilities to inspect in order to fill that time right
5 now. So it makes sense to change that particular
6 regulation to fit what is on the ground, the reality of
7 government.

8 And with that I'll turn it over to Mr. Manfredi.

9 MR. MANFREDI: First of all, I understand you
10 had -- my name's Stell Manfredi. I'm the County
11 Administrator for the County of Madera.

12 And, first of all, I want to thank you, because I
13 understand from your staff you made a special effort to
14 accommodate us. I know how hard your schedules are. I've
15 appeared in many -- over my career in front of commissions
16 like yours and boards and assemblymen and et cetera. So
17 thank you very much, because I know that your regular
18 Tuesdays -- I was in a board meeting every time.

19 If you could just kind of go along with my
20 September 29th letter, as I'm going to go in and out of
21 that particular letter and refer to a few charts.

22 We too are most interested in the most efficient
23 model that will protect the public interest. And I want
24 to discuss our current situation, the proposed RMA
25 situation, where we're going and how we got there, and why

1 we feel that it's not only an equal, but really a better
2 model to serve the needs of the LEA.

3 And Mr. Nelson's kind of right. I don't know the
4 inner-workings of the LEA. But I've been around this
5 system and been in county governments since 1971. And
6 I've been the county administrator -- the longest county
7 administrator in the state today, since 1990. So I may
8 not be a registered sanitarian or environmental health
9 specialist, but I have worked with Jill way before she
10 ever got here and I have -- working with her now.

11 The situation is -- in Madera County, like most
12 counties, all the department heads and all the individuals
13 report to the Board of Supervisors, and are hired and
14 terminated and evaluated by the board, not by me.

15 Simply put, from the inception of the LEA in
16 Madera County, the Director of the Environmental Health
17 and the LEA program have reported to the County
18 Administrative Officer and who, in turn, reports to the
19 Board of Supervisors.

20 I'd like to have you just kind of turn to that
21 first chart, which is the organizational chart generally
22 in our county prior to the Resource management agency.
23 Prior to that since the inception of the county
24 administrative office, probably in the fifties, all
25 departments, except elected, appointed to the county

1 administrator. And as you'll see there, our Department of
2 Engineering and General Services, which contracts with the
3 operators of the landfills and the hauling and the MRFs
4 and the transfer stations, are under the county engineer.
5 And the Department of Environmental Health manages,

6 controls and directs the LEA. Both of them report to me.

7 The essence of that ten or so year program is
8 that Ms. Nishi and her folks run the LEA, not me. Every
9 once in a while they may talk to me and tell me what's
10 happening or they may give you some of my correspondence
11 during that 10 or 12 year period. I not only supervise
12 those people for my whole career. I negotiate the landfill
13 contracts. I'm in the process right now of negotiating a
14 waste stream contract.

15 And so both of those people since the inception
16 of 1990 -- and I've been her boss up until just
17 recently -- reported to me. And I have been involved. So
18 I watch the hen house on both areas and have been. Has
19 that been a problem? I don't think so. I don't know one
20 time in my history that I've been written up by this Board
21 or any other board in my 35 years history. But it's
22 worked. It's worked at least for that particular period.

23 And as far as I know, there has been no
24 discussion or ever discussions of conflicts or et cetera,
25 because I want the same thing you do, what's the best

1 thing for the people of Madera County and to enforce the
2 laws of the State of California.

3 In the next paragraph of my letter.

4 Approximately two years ago the County of Madera created
5 the Resource Management Agency -- and I'll refer to it as
6 RMA -- and appointed a Resource Management Agency
7 Director. This Director oversees, directs, and provides
8 overall supervision to the development departments, the
9 four departments on Exhibit B, similar to what was
10 previously provided by the CAO. The RMA Director reports
11 directly to the Board, not me, by county ordinance; and
12 he's evaluated, hired and terminated by the Board.

13 Now, if you could turn to Exhibit B on my little
14 handout, you will see that as far as the RMA Director --
15 and as Mr. Nelson indicated, for those particular
16 departments, those four departments: Road; Environmental
17 Health, which with supervisors it performs the LEA duties
18 and program; Engineering; and Planning, the RMA Director
19 now is really the CAO. That individual does not report to
20 me. I do not have say over that individual. In fact,
21 that individual doesn't negotiate the contracts with the
22 landfill operator. I'm right now negotiating a contract
23 with Madera City, with their very good service of BFI.

24 And so the point is, in an effort to not only
25 have a better form of control, a better day-to-day

1 reporting -- and Mr. Nelson probably downplayed me more
2 than I would downplay myself. I know what LEA stands for
3 and I know a little bit about it. But the basic deal for
4 10 or 12 years is Jill did her job. And unless there was
5 a problem, been written up by this Board or this staff, I
6 pretty much did -- I left it alone. I have jails, union
7 contracts, roads, Sheriff, whatever -- and keeping board
8 members happy. And so I played very little attention to
9 the LEA, like most county administrators in this state do.
10 And I know at least half of them personally and the other
11 half by association.

12 And so, in essence, we thought we were doing a
13 better delivery of the public service and the law by
14 creating a model.

15 Before I get on to my letter and discuss a little
16 more points, we worked very diligently with your staff and
17 Dr. Levenson concerning these models. We were willing to
18 say, "Okay, for the purposes of LEA, let's draw a dotted
19 line from the Environmental Health Director and the LEA;
20 and for those purposes only, we will have that person,"
21 whoever that may be -- right now it's Ms. Nishi for the
22 last ten or so years -- eight years -- "will report to the
23 CAO if that makes" -- and I'm not saying this in a
24 negative connotation -- "if that makes you happy, because
25 that's on paper, so we can have" -- for that function she

1 will report to me on that thing and we'll do it by
2 ordinance.

3 "Well, no, we have to have somebody in your
4 office." Now, you have to -- one glove does not fit all.
5 Ms. Nishi has about 10 or 12 people on her staff. I have
6 3. And to have a registered or environmental health
7 person sit in my office that would report to me on a
8 day-to-day and come in and I'd say, "Bill, are you alive
9 around here?" First of all, I know very little about the
10 real aspects of the LEA and their day-to-day.

11 So we would have theoretically somebody moseying
12 around the county reporting to me and I would have that
13 one person. Now, that doesn't cover vacations, sick
14 leave. We have terminations, because obviously people go
15 to bigger and better counties that pay more. And then I'm
16 stuck there with this duty as a county administrator that
17 has no way to fulfill your staff, your regulation, and the
18 State of California rules. I see that as terrible,
19 terrible inefficiency of resources, because it looks good
20 and separation of powers.

21 We have no problem if it's your Board's wish and
22 your deliberation that the LEA Director and Environmental
23 Health Director should report to me. But to have somebody
24 report and sit in an administrative office about a half a
25 mile away to me seems a terrible inefficiency and a

1 terrible direct -- of separation of powers for the sake of
2 separation of powers.

3 In this particular model that I'm showing you on
4 Exhibit B, the RMA Director is hired and fired by the
5 board. Those individual department heads are hired and
6 fired by the board. And is there some immediate conflict
7 of interest if you keep it with county government, as Mr.
8 Nelson said? There is. The RMA Director, unless he's a
9 cheat or she is a cheat or I'm a cheat, is not going to be
10 in conflict any more than I am.

11 I have a responsibility to that board that hires,
12 fires me. I don't even have a contract. Neither does the
13 RMA director. And every Tuesday I can theoretically be
14 evaluated, and the same with the RMA Director. And so to
15 indicate there's an inherent aspect of conflict is
16 probably just the opposite. There's an inherent aspect of
17 inefficiency if it's directly put under me and especially
18 if it's designated over here in my shop.

19 The RMA Director has been inserted in the
20 county's organization profile to manage, direct, and
21 oversee the development of departments, which was
22 previously performed by the CAO. This has created a more
23 direct day-to-day supervision on the development function
24 and provides for better management, to say the least. The
25 RMA Director acts in the same capacity as the previously

1 performed duties of myself as the CAO to development of
2 department. The RMA Director acts as an independent
3 agency head. And I want to stress that. Independent
4 agency head. That individual is hired, fired and
5 evaluated by county ordinance by the board of supervisors,
6 not me. I cannot direct that individual. I coordinate.
7 I facilitate. And that's very important.

8 And also, that individual's subordinates, i.e.,
9 the Environmental Health Director is not hired and fired
10 or evaluated by him. He has input, but it's done by the
11 board of supervisors by county ordinance.

12 The approach has eliminated any conflict of
13 interest, including the separation of departmental
14 budgets, from the Engineering Department, which
15 coordinates the refuse disposal contracts, the individual
16 department head responsibilities, and -- this is the most
17 important thing -- and the assumption that one department
18 has the authority over another. The county engineer
19 cannot ride herd, cannot discipline or tell Ms. Nishi what
20 to do, nor can she tell the county engineer. We put them
21 together in a big building so we'd have one-stop shopping,
22 so we could better serve the public when they came to do
23 development projects. Having somebody go across a 50,000
24 square foot building and talk to somebody in the
25 Environmental Health Department from the Engineering

1 Department is no more than having somebody walk a half a
2 mile or get in their car and talk to somebody in my
3 office. Madera is not Los Angeles. In fact, it's not
4 even Fresno.

5 As indicated, I've been the CAO since before the
6 inception of the LEA process. To my knowledge it's run
7 relatively efficient in Madera County. And I can't speak
8 for the last two deans, but I think it's run relatively
9 efficient. To my knowledge, this process has worked and
10 has served the public, the county and especially, what
11 we're here for to review today, the LEA process.

12 The RMA Director organization model will not
13 degradate the LEA process, and provide the most efficient
14 use of our and the state's resources.

15 We believe this will have no negative effect on
16 the environment or the public. In fact, better. When the
17 model that we discussed with your staff -- and they've
18 been very gracious -- to put somebody in my office under
19 my direction and have John Q Public come and sit -- to the
20 administrative office that would have no reason to have
21 the LEA and say, "We want to speak to the Registered
22 Environmental Health Specialist" or "the Registered
23 Sanitarian." "Yeah, he's over there," "Oh, he's not in
24 today. He's sick," "Oh, well, Mr. Manfredi is hiring
25 somebody," "Oh, okay," or "he's on vacation" or "she's on

1 vacation," doesn't serve the public. It doesn't serve
2 you. It doesn't serve me. It makes, to be very frank,
3 and I poise myself in being frank after 35 years, is that
4 it makes a mockery out of the system. It makes a mockery,
5 because we have a piece of paper that looks good, but
6 nobody supervises -- and if we had 25 or 50 people in her
7 office, and we're 10 to 20 to 30 years difference, I'd say
8 so be it. That's a good model. But this model does
9 nothing for you, for us, or the institution to have
10 somebody -- now we're willing to compromise and we're
11 willing to work something that would be beneficial to your
12 staff and you and make it better. But to put something on
13 paper and so we can file and say, "This is good
14 government," it's not good government. And you need to
15 know that from the people on the ground.

16 I want to say, in conclusion, besides thank you,
17 that the county's local agency -- Local Enforcement
18 Agency -- excuse me -- acts in the same independent
19 capacity -- that's the most important thing I can stress
20 to you -- independent capacity and authority under the RMA
21 Director and organizational model as it did under me and
22 at the direction of the CAO. In fact, not only does it
23 act in an independent capacity. It acts in a more
24 efficient manner than I could ever judge or add to it.

25 One other additional point I would like to

1 make -- and I think Jill and Doug touched on it very -- to
2 a big point -- having an individual assigned to it -- you
3 have to be on the ground where we are. Because I know you
4 deal with everything from L.A. to Alpine. And that is a
5 stretch of a big, big realm. And we're about right in the
6 middle. Twenty-eight counties are bigger than us and
7 about twenty-eight are smaller than us as far as
8 population. So you're dealing with the middle of
9 California here as far as bigness in size of counties. To
10 dedicate one individual and say, "You are it" -- and
11 that's what you do -- "really smacks of inefficiency.
12 When that individual, once again, is absent, nothing gets
13 done. When that individual is on vacation, nothing gets
14 done. When that individual terminates and it takes us two
15 to three to four months to get a Registered Environmental
16 Health Specialist, nothing gets done or it piles on
17 somebody's desk.

18 In this particular model is that we have backup.
19 We have people doing it. We have one landfill and several
20 closed ones that we monitor and et cetera in Madera
21 County. And so there is coverage, there is coverage for
22 continuity. We think that model affords itself to better
23 management, to better government than to say, "John Doe's
24 responsible, Jane Doe's and can never" -- basically that's
25 all their job. In fact, I would say we dedicate more than

1 one full-time person to that.

2 And the county engineer, who is the keeper of
3 the -- the fox on the other side of the deal, does not,
4 does not, does not interfere with Ms. Nishi's operation.
5 I've seen to that when I've been county administrator.
6 And the RMA Director has and will. That is about as
7 unethical and as downright deplorable as you can get. We
8 don't do that on any form. And what makes anybody think
9 that if I was the RMA head -- excuse me -- the LEA over
10 that I wouldn't do the same thing as an RMA Director and
11 say, "Well let's work this out because I have to work
12 contracts out." I've worked out four or five in 35 years
13 flow agreements. I've worked out waste deals, et cetera,
14 with the two cities, et cetera. And never once, never
15 have I gone to our LEA Director, Ms. Nishi, or her
16 predecessor -- two of them before her or to our county
17 engineers and I say, "We want you to bend," because you
18 either have ethics in life or you don't have ethics. It
19 doesn't matter where you are.

20 And this model, we'd like to have you consider
21 that in your deliberations. And if you can't consider
22 that as we have it listed here on Exhibit B, we would
23 definitely at least have her or whatever report to me on
24 paper and et cetera, we'll dedicate more than a full-time
25 person to it, and that she will be responsible to me.

1 But to put somebody in my office and say because
2 it looks good and it makes a nice little bow on your
3 package -- on the package, it really is a sham.

4 And I want to thank you very much for listening.
5 I know I carried on a little bit. And, once again, I
6 thank you very much for accommodating little ol' Madera
7 County.

8 And I'll be happy to answer any questions.

9 CHAIRPERSON MARIN: Thank you, Mr. Manfredi. We
10 really appreciate you taking all the time you did.

11 Let me tell you a couple of things. Then let me
12 frame some of the issues that are before us the way that I
13 see it.

14 MR. MANFREDI: Yes, ma'am.

15 CHAIRPERSON MARIN: And of course we're going to
16 be deliberating here. We're going to be asking questions
17 back and forth. We're going to go with staff and so
18 forth.

19 But bottom line is the law is the law. It's very
20 simple. The way that I read the law -- and I did read
21 this law -- and this is one of the things that I always
22 tell people -- you know, the law is very clear. There are
23 very specific words. I didn't make the law. Just like we
24 didn't make AB 939. The law is the law. And there are
25 some -- you know, with the best intentions sometimes our

1 legislators or former legislators -- you know, he was one
2 of them.

3 MR. MANFREDI: I understand.

4 CHAIRPERSON MARIN: -- did not anticipate every
5 single consequence of this particular law. The way that I
6 read the law is very clear, very, very clear. So we have
7 to abide by the law. If we don't like the law, then we go
8 and make -- and change the law. But we cannot stop, at
9 least in our perspective, stop enforcing what the law
10 says. So that's the first thing. And we may disagree in
11 the interpretation of the law. But the way that I read
12 it, you know, as much as I would like to make some
13 accommodations, the law is very clear, the way that I read
14 it, the way my legal counsel interprets it. So that's
15 number one.

16 Number 2, we have 58 counties. We deal with 435
17 cities; 520 including the districts and the counties and
18 so forth. We have 58 LEAs. For most of them, for the
19 vast majority of them, this has never been an issue. And
20 whether -- and whether its's been voiced or silent, the
21 fact of the matter is, whether it's just on paper,
22 everybody except up till now Madera County basically at
23 least on paper say that they're doing and they're abiding
24 by the law. To make a change for you to accommodate you
25 will set a precedent that then may have very serious

1 detrimental consequences for all of us.

2 We make that opening. Then what's going to
3 happen is that 57 other counties will come in and say,
4 "Oh, wait a minute. There's a little blurb over here.
5 Maybe we can do this or maybe we can do this."

6 You see, it opens a door that, quite frankly, it
7 will be dangerous for us to open. Okay?

8 In the appearance of conflict of interest, you
9 may or may not be aware, but there are many people that
10 perceive the Local Enforcement Agency being in too cozy of
11 a relationship with the people that they're supposed to
12 enforce. That, we deal with it here all the time, much
13 more than we would like to deal with. It's just the
14 perception. Anything that furthers that misconception,
15 you know, where the question -- the integrity of the
16 enforcement agency is questioned, you know, we must take
17 every step to ensure that the integrity of the Local
18 Enforcement Agency remains unscathed. Anything that we do
19 that will increase that perception of too cozy a
20 relationship, it is our duty to try to minimize or reduce
21 or eliminate.

22 And so, insofar as the dedication of one
23 individual, I understand -- I mean all of us deal with
24 resource management. You know, the most prized resources
25 is the people that we have. And I am not going to second

1 guess your -- nobody else here is going to second guess
2 your ability to manage your resources. But by the same
3 token, we have this very expressed statement that the LEA
4 must be one individual. And unless we change -- and, you
5 know, we may discuss that. But right now we have every
6 single other county, you know, designated one particular
7 individual to be the LEA.

8 So those are the questions that I have and those
9 will be the -- at least from my perspective, the things
10 that we need to come to resolve, unless there are more
11 that we need to deal with. And we need to go one by one.
12 And we'll have the opportunity to have some question and
13 answer.

14 But, Ms. Peace, is there anything else?

15 BOARD MEMBER PEACE: When you said your
16 population's growing but your facilities that you inspect
17 and oversee haven't, I'm just wondering: Does Madera
18 County have fewer facilities for the LEA to inspect and
19 oversee than other counties of their size?

20 DEPUTY DIRECTOR LEVENSON: I don't have the exact
21 number to compare with other counties. We can go back and
22 get that kind of information. In general, I would say --
23 and Madera County I think could probably answer this
24 better -- that they're probably moderately -- you know, on
25 the moderate-to-low side.

1 BOARD MEMBER PEACE: So other LEAs that have --

2 Okay, Jill.

3 MS. NISHI: I just want to tell you that we do
4 have four active facilities and ten closed sites, if that
5 helps you out any.

6 CHAIRPERSON MARIN: Let me -- Howard, let me ask
7 you this. I remember reading the law very, very clearly.
8 The way that I read it -- and I don't have it in front of
9 me. I left it in my packet.

10 Can you tell me the wording specifically where --

11 DEPUTY DIRECTOR LEVENSON: Certainly, Madam
12 Chair.

13 CHAIRPERSON MARIN: Go ahead.

14 DEPUTY DIRECTOR LEVENSON: There are several
15 spots. But the initial provision is in Public Resources
16 Code 43207. In fact, I can put the slide up.

17 CHAIRPERSON MARIN: Yeah, I wrote it down 4307.

18 DEPUTY DIRECTOR LEVENSON: And that says that "No
19 local governmental department or agency or any employee
20 there of which is the operating unit for a solid waste
21 handling or disposal operation shall be the enforcement
22 agency or an employee thereof for the types of solid waste
23 handling or disposal operation it conducts unless
24 authorized by the Board to act in that capacity." And
25 that's -- I mean you mentioned this as well, Madam Chair.

1 The law is crafted in 1989, set forth this framework. And
2 you brought up the issues of statewide consistency in this
3 historical context, which is how I would have responded as
4 well.

5 If I could make a couple of comments --

6 CHAIRPERSON MARIN: Sure. Go ahead.

7 DEPUTY DIRECTOR LEVENSON: -- on this.

8 I want to come back to the second structure that
9 the county had proposed, which we had indicated would be
10 potentially okay but we did have some concerns about the
11 placement of the LEA. And as you've heard articulated so
12 well by the county, they don't feel that that's -- that
13 placing the LEA within the CAO is an efficient use of
14 resources.

15 We never specifically said you had to place the
16 LEA there. What we asked was -- we had concerns about how
17 that would function, and we were open to further
18 discussions about potential solutions that would allow
19 that structure to be implemented. For example, we never
20 got to ask whether there are other agencies within -- that
21 report to the CAO who could have housed the LEA. On some
22 of the old organization charts the Department of Public
23 Health reported to the CAO. Perhaps a solution would be
24 to have the LEA reporting through the Department of Public
25 Health.

1 But my point is that we never really sat down and
2 went back and forth to the county because at that point
3 they came back with a third proposal with the ordinance.
4 And so --

5 CHAIRPERSON MARIN: Well, let me stop right there
6 then.

7 DEPUTY DIRECTOR LEVENSON: Sure.

8 CHAIRPERSON MARIN: Because maybe we don't have
9 to go any further, if we were just to come to an agreement
10 on Option 2 and give you guys some time to work it out. I
11 mean we're not going to -- we're not going to ask Ms.
12 Nishi to be in your office so that she can say hello to
13 you and bring you coffee every morning. Right? That was
14 never the intention or the desire.

15 Can we work within Option No. 2?

16 DEPUTY DIRECTOR LEVENSON: If the county is
17 willing to go back and expeditiously discuss this so that
18 we can report back to you in some reasonable timeframe
19 that you specify, we'd be willing to do that, certainly on
20 the organizational issue.

21 The staffing issue is another question. You
22 know, I sympathize with the county --

23 CHAIRPERSON MARIN: Well, let me see if I can get
24 that.

25 Would that be something that you would be most

1 agreeable with?

2 MR. MANFREDI: Yes, we're agreeable to work at
3 it. We're not set in cement. We want to attempt to work
4 with your staff on that. And we want to make it
5 reasonable so there is a -- and I don't want to belabor
6 this, but if we had a whole unit, meaning three, four,
7 five people, then it would be easy. But when you have
8 theoretically one workload -- one staff person a year
9 workload or less, then it becomes everything from
10 coverage, supervision, all these type of deals. And in an
11 attempt to place somebody -- and I know it's not Ms.
12 Nishi, but whoever it was -- in a department with little
13 or no supervision or little or know expertise, I find that
14 a hard time how that would help you as a board, us or
15 anybody in the State of California to manage the LEA.

16 CHAIRPERSON MARIN: Okay. I appreciate that.

17 Let me --

18 MR. MANFREDI: But to answer your question
19 specifically, yes, we are. And when I -- when we had a
20 fairly high level talk with the deputy director here, I
21 was under the impression at least at one of our models
22 where the LEA process would report to me for just that
23 particular amount. We housed it in the Environmental
24 Health Department. And decisions and coordination would
25 have to be approved by me through the Environmental

1 Health. We thought we had, for lack of a better word, a
2 deal. And apparently that didn't materialize because of
3 the physical surroundings. It had to be -- there had to
4 be a person dedicated in my office and everything. And it
5 got very --

6 CHAIRPERSON MARIN: Well, we can -- I don't
7 want -- let's not belabor this. I don't think that that's
8 on the table right now.

9 MR. MANFREDI: Thank you, ma'am.

10 DEPUTY DIRECTOR LEVENSON: Correct, Madam Chair.
11 And per your direction of course, we would be happy to
12 engage in that discussion with the county. We'd like to
13 start with that Proposal No. 2 and discuss that with the
14 county and also be charged with a certain deadline or time
15 line to report back to you.

16 CHAIRPERSON MARIN: Right. Well, we need to come
17 to closure. This Board is very action oriented. We can't
18 belabor this for a long time.

19 Would November be plenty of time? December?

20 Is December okay with the Board?

21 BOARD MEMBER MULÉ: That's fine with me.

22 CHAIRPERSON MARIN: Ms. Peace?

23 BOARD MEMBER PEACE: (Nods head.)

24 CHAIRPERSON MARIN: Mr. Washington?

25 He wants it sooner. See, he's action oriented.

1 BOARD MEMBER WASHINGTON: And actually I do
2 believe that December is giving too much time. But if
3 that's going to help resolve this, I'm willing to go with
4 December. I think they can resolve this by November. But
5 if we -- if the Board wants to go with December, we'll do
6 it. We can't just continue to keep putting this off.

7 CHAIRPERSON MARIN: Right.

8 BOARD MEMBER PEACE: Because haven't we been
9 going back and forth for two years, three years?

10 MR. MANFREDI: No, two.

11 CHAIRPERSON MARIN: Two.

12 DEPUTY DIRECTOR LEVENSON: It's still going to
13 take some time to begin discussions, see if there's
14 something that can be agreed upon and formalized and then
15 bring that back to you in something that's acceptable to
16 all parties.

17 CHAIRPERSON MARIN: Right, right.

18 Okay. Let's work with Proposition -- Option No.
19 2. Proposition. We're dealing with propositions here.
20 Wait a minute. This is not good for my reputation.

21 (Laughter.)

22 CHAIRPERSON MARIN: Let's deal with Option 2.
23 We'll ensure that it comes back in December at the latest.
24 And understand that we appreciate the challenges
25 that you have. On the other hand, I am counting on your

1 understanding that we also have some limitations.

2 MR. MANFREDI: I understand.

3 CHAIRPERSON MARIN: Okay. Yes, further
4 clarification?

5 DEPUTY DIRECTOR LEVENSON: Well, just one
6 additional question is I'd like to raise a little bit
7 of -- or get a little bit of clarity on the staffing
8 issue.

9 BOARD MEMBER MULÉ: That's the next issue,
10 Howard, we're going to address.

11 CHAIRPERSON MARIN: On the staffing issues, yes.
12 Well I wanted to make sure that we -- make sure that we
13 don't set a precedent. For me it's very clear. If every
14 other agency is expected to have one designated person to
15 be the LEA, my concern is that if we don't have that
16 designation, that opens the door for other. And if you're
17 saying that you're 28, there are 27 other LEAs that have
18 less population, that have less resources, I'm looking at
19 the other 27. And I'm sure you understand.

20 MR. MANFREDI: And I think we can work on that.

21 CHAIRPERSON MARIN: Okay. Ms. Mulé?

22 BOARD MEMBER MULÉ: Thank you, Madam Chair.

23 And I just want to agree with you. To me, when I
24 read the language here in the law, it's very clear that
25 there will be one or more full-time staff people dedicated

1 solely for solid waste issues. It does not indicate
2 full-time equivalence. It says a full-time staff person.
3 And so I really do strongly support staff -- our staff's
4 position that you have a full-time person dedicated solely
5 to solid waste. It's the law. It's what Board Chair
6 Marin had stated earlier. We'd didn't create the law, but
7 we have to carry it out. We have a responsibility to
8 carry out the law. So I just would appreciate if you
9 could work on that and restructure your staffing, your
10 resources in such a way that you do have one full-time --
11 at least one full-time staff member dedicated solely to
12 solid waste issues.

13 Thank you, Madam Chair.

14 CHAIRPERSON MARIN: Okay. Any further questions
15 or comments?

16 Ms. Peace.

17 BOARD MEMBER PEACE: No, not really.

18 Going back to the PRC code that states, "No local
19 governmental department or agency which is operating it
20 shall be the enforcement agency." But it also says,
21 "unless authorized by the Board to act in that capacity."
22 So it does give you that little out.

23 Have we ever done that before?

24 DEPUTY DIRECTOR LEVENSON: No, ma'am.

25 CHAIRPERSON MARIN: And that's the question of

1 setting a precedent.

2 BOARD MEMBER PEACE: But the law does give you
3 that little bit -- does give you that little out there.

4 STAFF COUNSEL BLOCK: If I may.

5 CHAIRPERSON MARIN: Yeah, go ahead.

6 STAFF COUNSEL BLOCK: Elliot Block from Legal
7 Office.

8 And in fact it's certainly our position that that
9 language in the statute, the authorizing statute is what
10 would allow the Board to modify its regs if it wanted to.
11 But the regs, which implement that statute, as they
12 currently exist would not allow for the structure that's
13 there now. So you would have to go back and be revising
14 those regs to do that, as opposed to simply on a
15 case-by-case basis.

16 CHAIRPERSON MARIN: Right.

17 Okay. Everything's clear?

18 Direction is clear?

19 Mr. Manfredi.

20 MR. MANFREDI: Yes, thank you very much.

21 CHAIRPERSON MARIN: Okay. Ms. Nishi, thank you
22 very much. Mr. Nelson, thank you so very much for coming.
23 We really appreciate all of you in the audience.

24 Let me see. Does anybody else want to say
25 anything for the record?

1 No. Thank you.

2 This -- yes. We need a motion?

3 DEPUTY DIRECTOR LEVENSON: I think it would be
4 good for the record to have a motion.

5 BOARD MEMBER WASHINGTON: Madam Chair, I'd like
6 to move adoption of Resolution 2005-277, Option 2.

7 BOARD MEMBER MULÉ: Second.

8 CHAIRPERSON MARIN: Ms. Washington moves it, Ms.
9 Mulé seconds it.

10 Call the roll please.

11 BOARD SECRETARY BAKULICH: Peace?

12 BOARD MEMBER PEACE: Aye.

13 BOARD SECRETARY BAKULICH: Mulé?

14 BOARD MEMBER MULÉ: Aye.

15 BOARD SECRETARY BAKULICH: Washington?

16 BOARD MEMBER WASHINGTON: Aye.

17 BOARD SECRETARY BAKULICH: Marin.

18 CHAIRPERSON MARIN: Aye.

19 Mr. Levenson.

20 DEPUTY DIRECTOR LEVENSON: And just for the
21 record, we will revise the resolution that's in the
22 package to reflect Option 2 and your direction to report
23 back no later than December.

24 CHAIRPERSON MARIN: Thank you.

25 BOARD MEMBER WASHINGTON: Or you can come back if

1 you get it together before and let us know.

2 CHAIRPERSON MARIN: All right. Thank you.

3 (Thereupon the California Integrated Waste

4 Management Board meeting adjourned at

5 2:20 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing California Integrated Waste Management Board
7 meeting was reported in shorthand by me, James F. Peters,
8 a Certified Shorthand Reporter of the State of California,
9 and thereafter transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 12th day of October, 2005.

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22 JAMES F. PETERS, CSR, RPR

23 Certified Shorthand Reporter

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